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Bhera Ram & Another Vs. State of Rajasthan

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

: O R D E R :

S.B. Criminal Revision Petition No.1127/2006.
(Bhera Ram & Another Vs. State of Rajasthan)

DATE OF ORDER : February 26, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. Shyam S. Khatri for the petitioners.
Mr. J.P.S. Choudhary, P.P. for the State.

BY THE COURT :

By this revision petition, the petitioners seek to challenge the validity of order dated 16.10.2006 passed by the Addl. Chief Judl. Magistrate, Bhinmal whereby the learned Magistrate, in the midst of the trial, committed the case to the Court of Addl. Sessions Judge, Bhinmal under Section 323, Cr.P.C.

As per facts of the case, FIR No.144 of 2001 was registered against the petitioners and after investigation the police filed charge-sheet against them for offences under Sections 447, 341, 323, 325 and 382/34, I.P.C. During the course of trial, after recording the statements of the prosecution witnesses, the learned Magistrate examined the accused petitioners under Section 313, Cr.P.C. and the matter was fixed for final hearing. Arguments in the case were heard on 10.10.2006 and the case was fixed for judgment on 16.10.2006. On 16.10.2006, the learned Magistrate passed order under challenge and committed the case for trial to the learned Addl. Sessions Judge, Bhinmal observing that the petitioners have caused serious hurt to the complainant and the evidence in the case reveals that offence under Section 397, I.P.C. is made out against the petitioners which is exclusively triable by the Court of sessions. Accordingly, the learned Magistrate ordered the parties to appear before the learned Addl. Sessions Judge, Bhinmal on 20.11.2006.

Learned counsel for the petitioners contends that the order impugned is patently erroneous and illegal because it was not the stage to commit the case to the Sessions Court when final arguments in the case were already heard. Learned counsel for the petitioners

further contends that no offence under Section 397, I.P.C. is made out against the petitioners.

I have carefully perused the impugned order.

Section 323 of the Criminal Procedure Code reads as follows :

“323.Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.-If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provisions of Chapter XVIII shall apply to the commitment so made.”

It is thus clear from the provisions of the aforequoted section that at any stage of the proceedings before signing the judgment if, in the opinion of the trial Magistrate, the case is one which ought to be tried by the Court of Sessions, under the provisions, it can be committed to the Court of Sessions by the trial Magistrate.

Upon perusal of the impugned order, it is obvious that the learned Magistrate, after careful

consideration of the material on record as well as statement of the witnesses found that an offence triable exclusively by the Court of Sessions is made out against the petitioners accused under Section 397, I.P.C. Once the Magistrate has judiciously drawn the knowledge upon consideration of the evidence that an offence triable by the Court of Sessions is made out against the accused, the factum of notice to his knowledge renders him incompetent to try the case and, therefore, the section specifically empowers the Magistrate to commit the case under Section 323, Cr.P.C. 'at any stage of the trial'. This is precisely the purpose for the enactment of the provision and therefore enables the Court to wriggle out from the circumstance wherein, during the course to trial, the trial Magistrate happens to gather from the material and evidence on record that an offence triable by the Court of Sessions is in fact made out against the accused at the trial before him. The provision, in fact, thus forestalls an illegality from being committed at the hands of the Court.

In my opinion, whether offence under Section 397, I.P.C. is made out or not, for this purpose, the learned Magistrate has taken into consideration the evidence and detailed the facts and circumstances to arrive at the conclusion that there is evidence with

regard to offence under Section 397, I.P.C.

At the stage, in exercise of the revisionary jurisdiction, this Court would not go into the merit of the evidence whether offence under Section 397, I.P.C. is made out or not against the petitioners.

As a result of the foregoing discussion, I do not find any merit in the revision petition. The same is hereby dismissed.

(Gopal Krishan Vyas) J.